GMPA

Global Migration Policy Associates
*An International research, policy development,
advisory services and advocacy group*

Business & Human Rights: Context Briefing Note

Today's Challenges of Migration, Economic Viability, Decent Work, Development

This brief addresses a major field of human life directly concerning most people –and most businesses-- on this planet. *International migration* is essentially mobility of labour and skills, crucial to development since antiquity and to sustaining development, economies, businesses, societies, and social and economic welfare today. Migration for employment and treatment of migrant workers are a crucial arena for human rights respect, promotion and fulfillment. Major challenges to rights of and decent work for migrant workers are in or around employment and at the workplace; most foreign/migrant workers worldwide are employed in the private sector. See relevant articles at www.globalmigrationpolicy.org   See also *Migration, Human Rights & Sustainable Economies: A Century 21 Agenda.[1]*

I. Migration for employment

Basic data:
- 300 million *international migrants* are resident for a year or more in countries other than of birth or citizenship.
- Untold millions more migrants are abroad in seasonal or otherwise temporary short-term work.
- Three-quarters –73.2% of the global *migrant stock* –persons resident in another country than that of birth for 1 year or more-- are of prime working age –20-64 years, versus 57 percent for the total population.[2]
- Refugees overall comprise just over 15% of the total global international migrant stock.[3]
- Work-force participation rates of migrants are equivalent to or higher than for native populations.
- Nearly all international migrants are, or are intending to be, or have been, *economically active* –employed, self-employed or otherwise engaged in remunerative activity-- thus *migrant workers*-- or dependent on someone who is.
- «Cross-border migration currently generates an annual economic output of around **$9 trillion**»[4].
- The global value of migrant/immigrant skills and labour just in total pay and benefits may be $5.7 trillion dollars yearly, extrapolating from $ 857 billion total in personal remittances sent globally in 2023[5].
- Immigrants/foreign-born account for more than 14% of the population in half of OECD countries; they comprise 31% of total population in Switzerland, 29% in Australia, 27% in New Zealand, 22% in each Austria, Iceland and Canada, and 20% in each Ireland, Sweden and Israel[6].
- International migrant proportions in work forces are generally higher than their proportion in the population.
- 10 OECD countries, including Canada, the United Kingdom and the United States, as well as the EU27 overall, had the highest immigrant employment rates on record, while across OECD countries.[7]
- 30 million job offers across OECD countries lack adequately skilled takers present/resident in those countries.
- The workforce shortage is a global concern that spans nation states and industries. Estimates suggest that by 2030 there could be a global talent shortage of more than 85 million workers[8].

The major part of migration remains within regions: well over 50% in each Africa, Asia, Eurasia-CIS, Europe, and Latin America and the Caribbean. Exceptions are temporary migration to GCC countries from Asia and Africa and immigration to Australia, USA and Canada from other regions. The proportion of migration remaining within RECs -Regional Economic Communities-- is higher: over 80% for ECOWAS (Economic Community of West African States), EAEU (Eurasian Economic Union), and MERCOSUR (South American Common Market). About 45% of migrants to/in European Union (EU) countries originate in other EU member countries while 65 to 70% are from the wider Europe,

[1] Revista Tecnológica - Espol, 34(1), pp.193-217, March 2022. http://www.rte.espol.edu.ec/index.php/tecnologica/article/view/917

[2] IOM Slovakia webpage: Facts and Figures on World Migration. https://www.iom.sk/en/migration/migration-in-the-world.html

[3] Refugees are a part of international migration with a specific definition: "Refugees are people who have fled their countries to escape conflict, violence, or persecution and have sought safety in another country" https://www.unhcr.org/about-unhcr/who-we-protect/refugees Current UNHCR refugee and internal displacement data at: https://www.unhcr.org/global-trends-report-2023

[4] Boston Consulting Group. *Migration Matters: A Human Cause with a $20 Trillion Business Case* by Johann Harnoss, Janina Kugel, Karina Kleissl, Marley Finley, and François Candelon, December 2022. https://web-assets.bcg.com/1a/d1/ed3e7b194e0599500621570f19d2/bcg-migration-matters-a-human-cause-with-a-20-trillion-business-dec-2022-3.pdf

[5] World Bank (2024). Migration and Development Brief 40. https://documents1.worldbank.org/curated/en/099714008132436612/pdf/IDU1a9cf73b51fcad1425a1a0dd1cc8f2f3331ce.pdf

[6] Data for 2023. See: OECD. International Migration Outlook 2024. https://doi.org/10.1787/50b0353e-en

[7] OECD: https://www.oecd.org/en/publications/international-migration-outlook-2024_50b0353e-en.html

[8] World Economic Forum. https://www.weforum.org/stories/2024/04/cybersecurity-industry-talent-shortage-new-report/

notably Balkan countries, Moldova, Russian Federation, and Ukraine. In eastern EU countries, 80% of international migrants originated from elsewhere in Europe.

Migration is and has long been spread from high skilled, tertiary educated persons to 'huddled masses of poor' people. In the West, the majority of migrants have high school level, and many resident international migrants have tertiary education; for example, two-thirds of Ukrainians now in EU countries have tertiary education level.

II. High risks of indecent work for migrant workers

Migration is as much –if not more-- demand driven than supply driven. It has been for millennia, particularly taking into account slavery going back to times of Greek and other early civilizations. Historically and today, large numbers of migrants were and continue to be drawn to development poles but retained in precarious legal, social and economic status and usually maligned. A few examples: Irish, Italians, Chinese, Mexicans in 19th to 20th Century USA (and some 11 million undocumented immigrants today); black Africans in South Africa from across SADC and the whole continent; East Africans now following South Asians to labour in GCC-Gulf Cooperation Council West Asia countries-- and expelled -deported 'en masse', even massacred, at moments when not 'needed' or when removable scapegoats are convenient to blame and target in times of economic recession and social discontent.

While foreign workers occupy jobs across all skills ranges, many are concentrated in low paid, unprotected, precarious employment, often referred to as 3-D work: *Dirty, Dangerous and Degrading*. Higher concentrations are generally in the two most dangerous sectors for occupational safety and health: agriculture and construction. Migrants tend to be prevalent in other sectors also with high risks of poor working conditions, little application and enforcement of working conditions and OSH standards and minimal remuneration: aged-care, cleaning and maintenance; domestic work; healthcare; hotel, restaurant and tourism; services; and transportation.

International law as well as jurisprudence of the ILO Supervisory Bodies and regional courts such as the Organization of American States Human Rights Commission stipulate that International Labour Standards apply to all workers, regardless of type or formal/informal employment relationship and of legal status. The 10 Fundamental Conventions of the ILO are in effect binding on all member countries of the ILO, while implementation of the four widely ratified ILO Governance (Priority) Conventions including on labour inspection and tripartite consultation are essential for good governance that assures protection of rights of and decent work for migrant workers.

Gender dimension

Today most women migrants are economically active rather than dependants of migrant men. They migrate on their own in all regions. In a global context of stratification of employment and segmentation of labour markets, women migrants hold particular appeal for employers as they are sought after for 'women's work' that is usually low paid and unprotected: domestic work, healthcare, agriculture, hotel and restaurant, semi-skilled manufacturing in export processing zones. However, women migrant workers face a generalized lack of effective protection for their human rights and for decent work in agriculture, in textile sweatshops, in services, in domestic work, etc. in countries across the global North as well as in the South. Testimony abounds of women workers subject to abusive working conditions, sexual harassment, unprotected exposure to dangerous pesticides or chemicals, and other risks. While some workplaces are highly socialized, they are not organized, meaning no unions or associations for mutual defence and solidarity, nor bargaining power to press for decent work conditions and remuneration.

Women and girl migrants are at high risk of sexual and gender-based abuse, exploitation and violence to a greater or lesser degree in all countries of residence and employment. ILO Convention 189 on Decent Work for Domestic Workers addresses a sector of activity almost entirely comprised of women workers, while ILO Convention 190 on Violence and Harassment at Work is especially pertinent to the high risk of --often unreported-- harassment and abuse faced by women migrants. Ratification and domestication of these conventions is imperative to respect, promote and fulfill the human rights of all women migrant workers.

III. International framework for rule-of-law governance of migration and protection of migrants

The existing comprehensive international legal framework on migration is designed to support good governance and regulatory administration at national and local levels, where most responsibilities and issues lie. Three complementary international conventions provide a broad set of legal norms for governance and administration of migration, for international cooperation, and for protection of universal human rights including labour rights of all migrant workers: ILO Convention 97 on Migration for Employment (1949), ILO Convention 143 on migrant workers (Supplementary Provisions) of 1975, and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).[9] 96 States have ratified one or more of these three complementary conventions.

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[9] Texts, ratification status and related information available respectively at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12001:::NO::: and http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx

Furthermore, all 9 core international Human Rights Conventions apply inclusive of all migrants, and all International Labour Standards apply for all migrant workers with very few exceptions specified in a few ILO Convention.

The framework includes supportive mandates and responsibilities across the United Nations and other international and regional agencies and organizations, as well as global policy recommendations elaborated in authoritative international conferences over the last three decades. Major world conferences 1993 to 2001 in Vienna--on Human Rights, Cairo–Population and Development, Copenhagen–Social Development, Beijing–on Women, Durban–Racial Discrimination and Xenophobia, as well as the 2004 International Labour Conference in Geneva and recently, Habitat III in 2016 in Quito all gave extensive attention to migration and emphasized need for better legal protection of rights of migrants and refugees.

IV. Six real, inter-related Crises of migration today

1) Lack of skills and labour resulting in serious economic deficiencies

Serious economic constraints are worsening throughout industrialized world --East as well as West-- due to skills and labour shortages. Across Europe employers are finding it harder to attract and retain staff with the right skill-sets. This is reflected in the growing job vacancy rate in the European Union, with Germany in particular being highlighted as a country experiencing an acute shortage of qualified workers. Sectors where skilled workers are in short supply include construction, healthcare, software development, and a range of manual professions. Labor and skills shortages are both a short- and long-term challenge for the European economy. Europe is also facing a future where over a quarter of all people will be past retirement age, while education and training systems have not focused on the skills which are needed to replace retiring workers or to meet labor demand in growing industries, such as in IT. Shortages in the European labor market are the result of factors which have been long in the making - declining populations, underinvestment in education, poor job matching - as well as more recent challenges such as the COVID-19 pandemic[10].

In the USA, 11 million jobs on offer with "4 million fewer people available to work than employers want to hire" said Federal Reserve Chair Jay Powell, for three main reasons: early retirement, deaths from COVID, and not enough immigration[11]. Globally, by 2030 the global talent shortage may be more than 85 million workers[12]. While exacerbated by the pandemic, business economists characterize those shortages – and their economic consequences-- as persistent and structural.[13]

The real consequences are experienced by everyone worldwide: rising costs and prices –translating to increased inflation, production constraints, unfilled and un-fillable orders, supply and transportation bottlenecks, critical shortages of essential products – such the global shortage of semi-conductors crucial to just about everything today, slowdowns in entire industries –then cascading into layoffs as well as empty market shelves, and so on.

The problem is not fewer jobs, it is ever fewer people of working age with needed skills across the industrialized North and in parts of the South of the world. It is and will remain a problem of unmet demand for both skills and labour at all levels for an expanding array of infrastructure, production, transportation, services and tertiary activities in most countries. A major reduction in work performed by humans is no more likely in the near future with AI than since the advent of robotics, the generalization of ICT, nor mechanization. In all these transitions, while some jobs and occupations disappeared, others emerged, such as in the shift in developed countries from industrial production to services-based employment.

2) Aging and declining work forces

A majority of countries have fertility rates below (some well below) the population replacement rate. The consequence for many countries is already a decline in native workforce numbers. Fertility rates are declining in all countries, including across Africa and South Asia, to the extent that populations are aging and native work forces declining in European and other countries –including China, Russia and now the USA. UN DESA estimates that world population will continue growing ever more slowly until peaking at 10.4 billion in 2086 and then declining to about 10.3 billion in 2100. However, other research draws more striking projections: one that world population will peak at 8.6 billion in 2050 before declining to 7 billion in 2100.[14] In another scenario in that study, "researchers estimate that the global population will peak at 8.5 billion by around 2040 and decline to around 6 billion people by the end of the century."

The stark present is ever more global inversion of the age pyramid with higher numbers of older persons contrasting to both relatively and absolutely declining working age populations, on whom economic – and business- viability depends, as does the entire edifice of social security.

The global dichotomy is fourfold: in addition to demographic attrition of workforces, considerable unemployment is structurally inherent to jobless growth approaches by finance and industrial capital –North and South. Thirdly,

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[10] https://www.statista.com/topics/11864/labor-and-skills-shortages-in-europe/#topicOverview

[11] https://www.businessinsider.com/labor-shortages-immigration-retirement-covid-2022-12

[12] World Economic Forum. https://www.weforum.org/stories/2024/04/cybersecurity-industry-talent-shortage-new-report/

[13] See for example: https://www.businessinsider.com/labor-shortages-immigration-retirement-covid-2022-12?r=US&IR=T

[14] See: https://www.livescience.com/worlds-population-could-plummet-to-six-billion-by-the-end-of-the-century-new-study-suggests

technological evolution results in many workers left with obsolete skills or simply without skills relevant to today's employer needs. Fourthly, education and training lag behind evolving technical and labour market needs, both in numbers and in content, while training inadequately addresses 'youth bulges' in populations in Africa and South Asia.

A steady rate of maintaining and creating jobs will likely continue, while the number of workers in much of the world declines at increasing rates.

3) Increased abuse, violations of rights at work - and worse for migrant workers

News reports and human rights investigative documents amply indicate a continuing rise in both specific and generalized abusive treatment and vicious xenophobic violence against migrants – worldwide. Abusive treatment remains commonplace in the world of work while public manifestations of xenophobia and outright deadly violence against migrants and refugees are prominent in reported human rights violations.

Abusively exploitative conditions are commonly experienced by migrants. They are structurally driven. An excerpt from the executive summary of a timely and timeless report on the UK sums up treatment of many migrants, consistent with data from other developed, industrialized countries[15]:

> "Migrants, especially those from outside the EU-15 who have limited access to social security provisions, face the paradoxical position of being welcomed by businesses and the state due to their high flexibility and minimal utilization of the welfare state on the one hand, whilst facing increasing unease and hostility from anti-immigrant groups, the same state that welcomes them, and large numbers of the general public on the other.

> The highly unregulated and flexible economy has allowed many migrants to easily find work and businesses to remain competitive whilst simultaneously creating the conditions for widespread exploitation and producing divisions amongst workers, both between (native) born/migrant and between different groupings of labour migrants."

4) Deregulatory reinforcement of precarity, illegality and suppression of labour rights

Contemporary practice and policy is more than coincident with retrenchment of the classic approach: law, policy, discourse, and practice to keep migrants in unprotected and devalued – often unauthorized – situations, with precarious or undocumented --so called illegal—status, that in fact obliges their provision of cheap, docile, unorganized labour at a range of skills levels – including professional levels.

Keeping some migrants cheap, docile, flexible and removable without social costs is imperative to keep jobs at home and economies afloat. Migrant workers falling into or remaining in irregular situations are tolerated because they provide that cheap, flexible labour needed to sustain enterprises, employment and competitiveness. Labour standards are little applied in migrant-dependent sectors and industries while labour inspection is left with little or no capacity or competence to reach the workplaces and areas where migrant workers are prevalent.

Today, security and control institutions of States predominate in managing migration and controlling migrants with ministries of interior or home affairs holding lead responsibilities on migration in many if not most countries. Assertion by home affairs/interior ministries of hegemony on migration management and control is concurrent with broad deregulation of conditions for labour, while treatment imposed on growing migrant components of work-forces in turn influences conditions for the workforce broadly.

Administration of increasing foreign components of work forces by control institutions has consequences in shifting emphasis of law enforcement regarding work from labour standards to immigration enforcement and in imposing repressive policing to subdue labour conflicts at the expense of social dialogue.

In parallel, enhanced border and movement control measures within regional economic community spaces in Africa, the Americas and Eurasia have large implications in impeding and slowing mobility as well as raising mobility costs, contrary to facilitating free movement of labour, skills and services.

5) Context of increased hostility, scapegoating, rejection and violence against migrants

A deregulated control regime approach is accompanied, supported, indeed driven by double narratives characterizing and targeting migrants-immigrants-refugees-foreigners as threats, indeed major threats to safety, security, welfare and well-being of the native national population, often translated as likewise threats to local communities. Migrants are deemed as an all-encompassing threat, responsible for many if not all ills faced or perceived as such by the local-national-native people.

Effective political mobilizing around these narratives and scapegoating has succeeded in co-opting widespread social discontent over deteriorated conditions for many people in many countries, consequently both legitimizing political forces, and mainstreaming their narrative and programs. With the result of a growing number of governments and parliaments in countries across Europe and elsewhere, all but dominated by political forces anchored in anti-migration.

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[15] Cook, I. (2011). *Hierarchies of Vulnerability: Country report United Kingdom*; Labour migration and the systems of social protection. Multikulturni Centrum Praha, Czechia.
https://aa.ecn.cz/img_upload/6334c0c7298d6b396d213ccd19be5999/ICook_Hierarchies_of_Vulnerability_UK.pdf

A burning concern is the generalized rise of discriminatory practices as well as of racist and xenophobic behaviour against migrants. Reported incidents in all regions include: shootings of migrant workers at or near workplaces; individual or mob attacks on and killings of migrants; also, in situations of domestic unrest and civil conflict, foreigners have been explicitly targeted with deadly hostility. This aggravated by absence with few exceptions of vigorous responses by governments to anticipate, discourage and prevent manifestations of xenophobic hostility against foreigners, and to prosecute perpetrators. Anti-foreigner hostility is aggravated by discourse by political leaders and action by some governments that tacitly encourage or directly engage in public brutality and violent repression against migrants, including police round-ups, mass detention, and deportation of migrants.

6) De-regulatory regime change, globally

In parallel, global regime change has evolved over the last two decades with decline of normative rights protection in governance, in structure of States, in policy and administration, and in business. This is characterized by: diminishing or non-recognition of rights including rights at work; dismissal of application of labour standards –and not only to migrant workers; change from employment and labour administration law, institutions and policy in governing migration and treatment of migrants to primacy of policing control and management in discourse, institutions, policy and practices; shifting of government policy making and implementation on migration matters from parliamentary legislating and oversight and judicial review to arbitrary executive branch policy-making and execution subject to little parliamentary rule-making and oversight nor to judicial review. Both of the latter are essential components of democratic governance under the rule of law. Criminalization of migrants and migration, use of mass detention, proliferation of walls, and militarization of borders all stand in stark contrast to notions of freedom of movement as well as to respect and fulfillment of human rights.

Consistent with the above is international regime change from a global framework of normative regulation, binding legal obligations and the accountability of formal reporting on compliance, to non-binding 'commitments' on general policy options and practice recommendations. The Global Compact for Safe, Orderly and Regular Migration (GCM)[16] while providing broad policy guidance on migration, diverges from upholding binding norms of human rights protection and labour standards with the legal accountability of States under international law, by establishing a non-binding set of policy recommendations. Many of these articulate lower and more narrow expectations than existing legal norms in widely ratified human rights Conventions and International Labour Standards.

As a pact of guidelines for executive migration *management*, the Compact undermines the crucial role in governance of the legislative parliamentary branch and dismisses the supervisory role of the judiciary, relegating these to sidelines by positing migration as an executive branch matter if effect unfettered by legislative definition and judicial review.

The GCM incorporates language and policy of repressive control of mobility, commending measures that effectively criminalize irregular migration, as well as migrants in irregular situations, and that legitimize deportation and involuntary return. The GCM calls on States to strengthen surveillance and control over borders, objectively constraining universal rights to leave and return freely to one's own country and undermining free movement essential for development across regional communities in Africa, the Americas, Eurasia, and Europe.

Two issues of particular concern:

(1) Focus on trafficking

The emphasis on control and repression of criminality inherent in counter-trafficking de facto and de jure directly strengthens associations of migration and migrants with crime. As with so called *employer sanctions*, the effect of anti-trafficking controls tends to target, victimize and sanction purported migrant victims more than perpetrators. Furthermore, the frequent amalgamation of trafficking with smuggling and repression of the latter are highly problematic for many people fleeing war, persecution, generalized violence and human rights violations, situations in which paying for services to get across militarized borders and/or across deserts and seas is the only mechanism to escape and attain countries where protection may exist.

Both trafficking and smuggling are direct effects of not only constraints on human mobility, but barriers between economic and labour market supply and demand. Absence of labour standards and human rights enforcement impeding abuse and exploitation in the world of work, combined with restrictions of cross border movement, in fact feed incentives for smuggling of migrants, and facilitate coercive and exploitative outcomes of trafficking by ensuring that migrant workers in unauthorized situations are unprotected, can't complain and can't organize. That thus makes them easy prey for exploitative employers and agents. International trafficking in persons tends to decline if not disappear when border barriers go down while labour standards remain enforced, as demonstrated by experiences of EU expansion and the implementation of regional free movement regimes there and elsewhere –within which trafficking by-en-large no longer thrives.

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[16] United Nations General Assembly (2018). *Global Compact on Safe, Orderly and Regular Migration*. UN General Assembly Resolution A/RES/73/195 adopted on 19 December 2018. New York. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195

(2) Emphasis on temporary labour mobility

Advocates of 'circular migration' (often a misnomer for short term, temporary, and seasonal mobility regimes) characterize it as the solution to both employment needs and to protecting 'national cohesion and cultural integrity' of nation states needing foreign labour. However, both by their nature and by explicit conditioning, temporary labour mobility regimes generally restrict protection of human and labour rights, limit application of labour standards, and often prohibit unionization.

Temporary regimes and other mobility control measures undermine exercise of freedom of association rights in internationalized labour markets and employer supply chains. Control on movement facilitates tightened control on workers and work forces, restricting realization of rights including to change employers or workplaces to escape exploitative, oppressive conditions. Tightened control and restricted mobility impede union organizing across sectors and industries as well as in production chains that themselves are increasingly organized across borders. Ironically, temporary regimes cannot address the bulk of needs in most countries for technical, vocational and tertiary education skills and competences whose recruitment, on-the-job orientation, and productive performance over time require longer/long term employment and residence.

V. Agenda: what needs to be done

12 key aspects that represent a global agenda of advocacy and action for ensuring human rights and decent work for all in the world of business, including foreign/migrant workers. These points all derive from international law and from policy recommendations of authoritative international UN and ILO conferences:

1. **Advocate human rights, legal recognition, and equality of treatment under the rule of law** for all migrant/foreign workers: promote ratification and full implementation of the migration governance/migrants rights conventions - International Convention on rights of migrant workers (ICRMW) and ILO Conventions C-97 and C-143 on migration for employment/migrant workers, as well as ILO C-189 on decent work for domestic workers and C-190 on eliminating violence and harassment in the world of work.

2. Convey narrative about migrant workers – and all migrants and refugees-- as *people with inherent rights and dignity*, emphasizing inclusion, equality of treatment and opportunity in what is called the *rights-based approach*.

3. **Implement rights protection and decent work** including by explicit company policy and practice application of all labour law standards to all workers/employees/staff inclusive of migrants.

4. Ensure explicit **non-discrimination**, anti-xenophobia equality of treatment and inclusion codes, policy, discourse and practice in enterprises - and particularly at all workplaces.

5. Ensure respect for **freedom of association and collective bargaining rights** inclusive of all migrant workers.

6. Promote **gender-responsive law** as well as company policy and practice including for migrants and refugees.

7. Lobby for, facilitate and support **regularization** of all migrant employees and members of their families, who may be in unauthorized or precarious status.

8. Institute **effective labour inspection** at workplaces employing migrant workers.

9. **Insist** with government, parliament and social partners that law, policy and practice concerning migrant workers is **conducted by institutions of employment and social administration** governance, along with legislative oversight and judicial review.

10. Ensure **full tripartite consultation** in policy making, implementation and monitoring, and promote social partnership between employers and unions/worker representatives on all matters of migration and treatment of migrants.

11. Recalibrate corporate discourse, communications, thinking and practice to **uphold freedom of movement** for people –notably women and men workers -- within regions and to oppose building walls or militarizing borders.

12. Advocate, support and facilitate **implementation of regional systems of free movement-rights of residence-rights of employment** and establishing business, complementary to regional integration, development and free trade.

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